Shaffer's case was referred to by Scrutton L.J. in *Merz* v. *South Wales Equitable Money Society, Limited,*(6) although his Lordship refrained from expressing an opinion as to whether it was rightly decided. Atkin L.J. in the same case said:—

"In my opinion the Act provides that if a moneylender takes the security of a promissory note it must be in such a form that the only person who can sue upon it is the moneylender himself in his registered name."

In the present case reference was made in the memorandum to the cheque by its number so that there was no question of anybody other than the plaintiff being in a position to sue the defendant on that cheque. The taking of the cheque as security in this case, therefore, in my opinion, did not render the contract illegal and void. I must add, however, that the penalty imposed by section 8(c) of the Ordinance is not for the protection of revenue but for the protection of the public, so that in a proper case a contravention of the section would render the contract illegal and void (see *Victorian Daylesford Syndicate, Limited* v. *Dott* (7)).

Another point taken on behalf of the respondent was that section 18 of the Ordinance had not been complied with, because in the account books kept by the appellant the rate of interest was shown to be $1.50. I do not think there is much substance in this ground because, if the rate of interest was 18% per annum, it was $1.50 per month. In any event, this point is tied up with the main point raised, namely, that there was no indication from the memorandum itself as to what the rate of interest was.

The last point raised was with regard to the production of a statement of account when the proceedings are taken in court, as required by section 21(1) of the Ordinance. It was contended that, although a statement of account was exhibited to the statement of claim in this case, it was not signed by the plaintiff or his agent. The short answer to this is that what is required is production of a statement of account. Whether that statement is produced by the moneylender or his money-lending agent or their solicitors, who must be treated as their agents for the purpose of the production of the accounts, is immaterial.

In the result the appeal will be dismissed with costs. Deposit in court to be paid out to the respondent against taxed costs.

Appeal dismissed.

Solicitors: *Lovelace & Hastings; V. K. Palasuntharam.*

OH AH GOH v. KUAN KEH LAN & ANOR.

[O.C.J. (MacIntyre J.) April 18, 1966]

[Ipoh — Civil Suit No. 68 of 1966]

Practice and Procedure — Writ of summons — Statement of claim — Signing of — Service copy of writ and statement of claim delivered not signed — Application to set aside writ and statement — R.S.C. 1957, O. 3 r. 1 at O. 19 r. 14.

This was an application for an order to set aside a writ of summons and the statement of claim therein. The plaintiff had taken out a writ against the defendants. The issue copies of the writ of summons and the statement of claim had been duly signed by the plaintiff's solicitors but when the documents were served on the defendant neither the indorsement of the claim in the service copy of the writ nor the statement of claim was signed by the plaintiff or her solicitors.

Held: (1) although the service copy of the writ was not a true copy in that it did not indicate it had been signed it was nevertheless a true copy within the meaning of Order 9 rule 2 so far as the particulars of claim were concerned and therefore the writ was not a nullity;

(2) as the statement of claim delivered to the defendant had not been signed by the plaintiff's solicitors it was not a statement of claim within the meaning of the Rules of the Supreme Court and therefore the statement of claim and service thereof must be set aside.

Cases referred to:—

(1) *Maclaine Stokvis (Malaya) Ltd.* v. *The Saloma Company* [1959] M.L.J. 241.

(2) *Cassidy & Co.* v. *M'Aloon* 32 L.R. Ir. 368.

(3) *Murray & another* v. *Stephenson* (1887), 19 Q.B.D. 60.

(4) *Cheang Chan etc.* v. *Lee Kim Kok* [1959] M.L.J. 242.

MOTION IN CIVIL SUIT.

N. T. Rajah for the plaintiff.

Ng Chee Kong for the second defendant.

MacIntyre J.: The 2nd defendant moves the court for an order to set aside the writ of summons and the statement of claim herein with the service thereof on the grounds that:—

(a) the indorsement of claim is not signed by the plaintiff or her solicitors; and

(b) that the "statement of claim" affixed on the writ of summons is not a statement of claim within the meaning of the Rules of the Supreme Court 1957 and/or in the alternative it is not signed by the plaintiff or her solicitors.

The facts are as follows. On the 10th of March 1966, a copy of the writ in the general form was served on the 2nd defendant with a statement of claim affixed to it. The issue copies of the writ and the statement of claim had been duly signed by the plaintiff's solicitors but neither the indorsement of the claim in the service copy of the writ nor the statement of claim was signed by the plaintiff or her solicitors.

Counsel for the 2nd defendant contended that by virtue of the failure of the solicitors for the plaintiff to sign the indorsement in the service copy of the writ and the statement of

claim affixed to it, there had been an infringement of the provisions of O. 3, r. 1 and O. 19, r. 4 of the Rules of the Supreme Court respectively and consequently the writ of summons and the statement of claim were a nullity and should be set aside.

Counsel further submitted that in this case, the statement of claim should not be regarded as accompanying the writ within the meaning of O. 20, r. 1(b) of the Rules of the Supreme Court as it had been gummed on to the writ itself but should be regarded as only an indorsement on the writ; and since the Rules do not provide for a general form of writ to be specially indorsed with a statement of claim the writ was a nullity. On the other hand, it was contended that even if the writ was not a nullity on that ground it would still be a nullity by virtue of the omission of plaintiff's solicitors to sign a statement of claim indorsed on a writ on the authority of *Maclaine Stokvis (Malaya) Ltd.* v. *The Saloma Company,*[1] in which it was held that a specially indorsed writ with an unsigned statement of claim indorsed thereon was a nullity and ought to be set aside. I think that the principle underlying that decision is that a specially indorsed writ within the meaning of O. 3, r. 6 is not merely a writ but also contains a pleading which must be signed by the plaintiff's solicitors as required by O. 19, r. 4. This also appears to be the basis of the decision in *Cassidy & Co.* v. *M'Aloon,*[2] but in *Murray & Another* v. *Stephenson* [3] it was held that for the purposes of service under O. 64, r. 4, a specially indorsed writ is not a pleading. Be that as it may, I cannot subscribe to the view expressed by counsel that merely because the statement of claim is affixed with gum to the writ of summons it ceases to be a statement of claim accompanying a writ of summons within the meaning of O. 20, r. 1(b).

Now with regard to the question as to who should sign an indorsement of claim on a writ and who should sign a statement of claim, the answers are provided for by O. 3, r. 1 and O. 19 r. 4, respectively. O. 3, r. 1, reads as follows:

> "The indorsement of claim shall be made on every writ of summons before it is issued and shall be signed by the plaintiff or his solicitor."

This rule makes it clear that the indorsement may be signed by either the plaintiff or his solicitor, but in respect of a statement of claim, which is a pleading, O. 19, r. 4, reads as follows:—

> "Pleadings shall be signed by the solicitor, or by the party if he sues or defends in person."

Therefore, as far as a pleading is concerned it is mandatory that it should be signed by a solicitor, if one is retained by a party.

In *Cheang Chan etc.* v. *Lee Kim Kok,*[4] the point in issue was whether the failure on the part of the plaintiff's solicitors to sign the indorsement of the statement of claim on a writ in the general form rendered the writ a nullity or not. In dismissing the application, Neal J., distinguished that case from *Maclaine Stokvis (Malaya) Ltd.* v. *The Saloma Company, supra,* in that he was not dealing with a statement of claim indorsed on a specially indorsed writ but with a statement of claim indorsed on a general writ and that the omission of the plaintiff's solicitors to sign it was immaterial as they had in compliance with O. 20, r. 1(b), delivered a separate statement of claim duly signed by them.

In the application before me, I was asked to set aside a writ in the general form on the ground that the indorsement of claim was not signed by the plaintiff or his solicitors. It would have been more correct to say that what was not signed was not the indorsement of claim on the writ but the indorsement on the service copy of the writ. Now O. 9, r. 2 lays down the method of service of a writ. It says, and I quote: "The writ shall, wherever it is practicable, be served by handing to the defendant a copy of the writ and showing to him the original writ if so requested." But counsel contended that the service copy did not even indicate that the original had been signed and must be regarded as a nullity. With respect I differ from that view. The service copy may not have been a true copy in that it did not indicate it had been signed but it was nevertheless a true copy within the meaning of that word in O. 9, r. 2, as far as the particulars of the claim are concerned. Further, the defendant had the opportunity of checking the original when the copy was served to see if the original had been signed. I therefore hold that the writ is not a nullity merely because the service copy did not show whether the original had been signed by the plaintiff's solicitors or not.

The second part of the prayer is to set aside the statement of claim delivered to the defendant and the service thereof on the ground that the statement of claim is not a statement of claim within the meaning of the Rules of the Supreme Court. I am in entire agreement with this proposition. With regard to the effect of unsigned pleadings the learned commentator at page 457 of the *Annual Practice* 1962 (Vol. 1) has the following to say, and I quote:

> "A pleading not signed is not a pleading 'delivered' within the meaning of the rule, so if an unsigned statement of claim is delivered, it is a mere nullity, and if there is an apparent default in delivery of defence, the plaintiff will sign judgment in default at his own risk."

The true situation of the case is, the plaintiff having caused the service of the writ to be made and the 2nd defendant having entered appearance within the specified time, a statement of claim has not been delivered within 10 days as required under O. 20, r. 1(b).

In the result the application to set aside the writ is dismissed. I allow the application to set aside the statement of claim and service thereof. The time for delivery of the statement of claim is extended to 10 days from date hereof. Plaintiff to pay the 2nd defendant the taxed costs of this motion.

Order accordingly.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Singh & Co.*

WEARNE BROTHERS (M) LTD. v. JACKSON

[A.C.J. (Abdul Aziz J.) April 19, 1966]

[K.L. — Civil Appeal No. 26 of 1965]

Hire Purchase — Breach of agreement — Provision for compensation in agreement whether a penalty clause or a genuine pre-estimate of damage — Contracts (Malay States) Ordinance, 1950, s. 75.

This was an appeal against the award of damages for breach of contract in respect of a hire purchase agreement relating to a motor car. The main ground of appeal was that the learned president of the sessions court failed to consider whether the relevant clause in the hire purchase agreement was a penalty clause or was a genuine pre-estimate of the damage as on the date of the agreement. The learned president merely applied the common law principle for the assessment of damages for breach of contract.

Held: (1) whether the clause in the agreement was a penalty clause or not was irrelevant in view of section 75 of the Contracts (Malay States) Ordinance, 1950, which provides that in every case the court must determine what is the reasonable compensation. The effect of the section is that the plaintiff is disentitled from recovering simpliciter the sum fixed in the contract whether as penalty or liquidated damages and must prove the damages suffered by him unless the sum named is a genuine pre-estimate;

(2) in the case the clause in the agreement gave a genuine pre-estimate of the damages for depreciation contemplated by the parties at the time when they entered into the contract and as the damages fixed by the parties did not appear to be unreasonable or disproportionate to the nature and extent of the depreciation, the court would award such damages.

Cases referred to:—

(1) *Maniam* v. *State of Perak* [1957] M.L.J. 75.

(2) *Bhai Panna Singh* v. *Bhai Arjun Singh* A.I.R. 1929 P.C. 179.

(3) *Lamdon Trust Ltd.* v. *Hurrell & Anor.* [1955] 1 W.L.R. 391; [1955] 1 All E.R. 839.

CIVIL APPEAL.

Eugene Lye for the appellant.

V. Oorjitham for the respondent.

Abdul Aziz J.: This is an appeal against the award of damages given by the president, sessions court, Kuala Lumpur in respect of a breach of a hire purchase agreement. The main ground of appeal was that the learned president failed to consider whether clause 6 of the hire purchase agreement was a penalty clause or was a genuine pre-estimate of the damage as on the date of the agreement.

The facts are not in dispute and they are briefly as follows: The defendant entered into an agreement with the plaintiff firm for the hire purchase of a Morris saloon car. The hire purchase agreement produced before the court contains terms and conditions usually employed by motor firms generally, one of which (clause 6) reads as follows:—

"If the owner retakes possession under clause 3 hereof the hirer shall pay to the owner by way of compensation for depreciation the amount, if any, by which one-half of the hire purchase price exceeds the total of the sums paid and the sums due in respect of the hire purchase price immediately before retaking possession, together with any other sums due and payable hereunder at the date of the termination aforesaid."

On the 25th June 1964 the defendant was in arrears of instalments whereupon the plaintiff terminated the hire purchase agreement and repossessed the car. On the date of the termination of the agreement the defendant had paid eight monthly instalments out of twenty-four and including a sum paid at date of execution. This amounted to $1,563.10. After repossession the car was subsequently sold by the plaintiff firm for $3,400. The plaintiff now claims by way of compensation for depreciation under clause 6 the sum of $1,470.70 made up as follows:—

Hire purchase price	=	$5,987.60
½ hire purchase price	=	2,993.80
Add repossession expenses	=	40.00
		3,033.80
Less payment received	=	1,563.10
Balance due	=	1,470.70

The learned president in his grounds of judgment made no specific finding as to whether clause 6 was a penalty clause or liquidated damages but merely applied the common law principle for the assessment of damages for breach of contractual obligations and in applying this principle took into account the resale value of the car and other factors and consequently awarded damages of $239.80. Against that decision the plaintiff has now appealed.

A number of English authorities were quoted before me in support of the appeal on the question of penalty and damages, none of which, with respect was strictly relevant to the appeal. In my view the matter falls to be considered under section 75 of the Contracts (Malay States) Ordinance 1950 which is *in pari materia* with section 74 of the Indian Contract Act and which reads:—

"75. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other